

CURRENCIES

NEWS FROM THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS
SECOND/THIRD QUARTER, 2006

from the commissioner

During the 2006 legislation session, the Tennessee Home Loan Protection Act ("the Act") was enacted by the General Assembly and signed by Governor Bredesen and I would like to take this opportunity to briefly give the status of the Department's efforts to enforce the Act beginning January 1, 2007.

I established a working group within the Department to review the various predatory lending issues and bills before the General Assembly during the legislative session. That group remains intact today and we will continue to meet and discuss developments under the Act into 2007.

I have charged this group with giving as much life to this Act as possible within the four corners of the law. We have spent many hours reviewing the Act in order to provide guidance to

(CONTINUED ON
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ACTING
COMMISSIONER
GREG GONZALES



ERWIN NATIONAL BANK CONVERTS TO STATE CHARTER; RENAMED MOUNTAIN COMMERCE BANK

Mountain Commerce Bank, most recently known as Erwin National Bank based in Erwin, recently converted from a national banking association to a state-chartered bank on September 1. The bank filed applications in April of this year and received all approvals from the Department in early July.

The conversion and name change are the most recent transactions that have taken place regarding this banking entity. Founded in 1910, Erwin National Bank was acquired by Mountain Commerce Bancorp, Inc. on September 1. It received approval from the Federal Reserve Bank of Atlanta in early July for its application to become a bank holding company by acquiring Erwin National Bank.

All of these changes now solidify the bank's plans to become a regional force in banking, said Bill Edwards, President and Chief Executive Officer of Mountain Commerce Bank.

"We believe the acquisition of the 96-year-old Erwin National Bank allows nearly a century old foundation of banking to become the cornerstone of regional growth in the mountain south region of East Tennessee and Western Carolina," Edwards said.

As it relates to converting to a state charter, Edwards said there were numerous reasons for the conversion including more flexible capital requirements, reciprocal banking laws in nearby North Carolina and Virginia, and the importance of existing relationships.

For example, Jim Friddell, who serves as the bank's Chief Operating Officer and



Bill Edwards



Jim Friddell

MONEY SERVICE BUSINESS EXAMINATIONS CONDUCTED ON CHECK CASHERS

A new component has recently been added to the examination used for licensed Check Cashers. The new Money Service Business ("MSB") section of the Check Cashing examination began to be used in May 2006.

The expanded examination will inquire into the following:

- Did the MSB register timely with Financial Crimes Enforcement Network ("FinCEN"), and if so, do they maintain a copy of the acknowledgement letter and registration form?
- Does the MSB have a written Anti-Money Laundering ("AML") program in place along with documented, periodic, independent testing for compliance?

- Does this program identify the Bank Secrecy Act ("BSA") compliance officer?
- Does the MSB have documented, ongoing BSA training?
- Does the MSB complete and file all applicable FinCEN forms?

To determine if you are an MSB, visit the MSB web site at www.msb.gov. If you meet the definition and have not already registered with the Treasury Department/FinCEN, you may do so at http://www.fincen.gov/reg_guidance.html where registration forms and information are available. For questions regarding this, please contact Steve Henley, Director of Examinations at 615-741-3186.

from the commissioner

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affected industries and to be ready to examine under the Act in 2007.

This Act is important when coupled with what the Department has done in recent years. Two years ago, the Department recommended legislation to require the registration of mortgage loan originators and we have since then registered thousands of originators. Therefore for the first time, essentially all of the individuals involved in the mortgage loan process were covered. With the enactment of the Act this year, high cost lending was defined and restricted for the first time under Tennessee law.

We are in the process of meeting with various groups to provide information and answer questions. Workshops are being held in Memphis, Nashville and Knoxville to address licensee queries. The Department's website will contain information, including Frequently Asked Questions. The examination process is being revised to account for the Act.

I want all to know that the Department is preparing to fully enforce the Act next year and we look forward to reporting results in the future. ■

FALL 2006 CONSUMER WORKSHOP



In its continuing efforts to educate consumers regarding financial education, the Department's Consumer Resources Division is partnering with the Tennessee Department of Commerce and Insurance to present a consumer workshop in Jackson. The event will be held from 8 a.m. - 4 p.m. on October 25 at the West Tennessee Research and Education Center/Agriculture Center located at 605 Airways Boulevard in Jackson.

This free day-long event will cover topics including identity theft, financial emergency disaster preparedness, fraud, investments, and insurance. For more information contact Kayce Cawthon Stoker, Consumer Resources Specialist, at kayce.stoker@state.tn.us or call 1-800-778-4215 or 615-741-1094.

LICENSE RENEWAL REMINDER

In an effort to process license renewal applications efficiently, the Compliance Division is encouraging and reminding licensees/registrants to return their applications in a timely manner. As a reminder, each licensee/registrant ("licensee") under the Residential Lending, Brokerage and Servicing Act must pay a renewal fee and file a renewal application with the Department on or before December 1. Failure to do so will cause the license/registration to expire on December 31. This deadline also applies to mortgage loan originator registration renewal certificates for

those individuals affiliated with the company.

If a renewal application is sent in by or before the deadline, the company can obtain their license renewal in a timely manner. It gives the Department the time needed to review the application for accuracy and completion. "Typically, many of the licensed entities do not send in their renewals until the last minute which causes a back-up in processing. Fully completed renewal applications, submitted with the renewal fee and all required supporting documentation, will enable the

Department to renew licenses as quickly as possible," said Carl Scott, Director of Licensing.

The renewal applications were mailed in September to each company's home office. The completed application must be returned to the Department postmarked by December 1, 2006 in order to avoid additional fees.

Licensees may also download the renewal forms from the Department's website www.tennessee.gov/tdfi. For questions or more information concerning license renewal, call the Compliance Division at 615-741-3186.

ADAMS PROMOTED TO CHIEF ADMINISTRATOR POSITION

Chris Adams was recently promoted to the position of Chief Administrator for Safety and Soundness in the Compliance Division. In this role, Adams will oversee and direct all exam-related functions for the Division. In addition, he will be involved in various strategic initiatives including the planned expansion for out-of-state exam activities.

Prior to this promotion, Adams served as Manager for the Middle Tennessee region since November 2004. He has 17 years experience in the Department.

TITLE PLEDGE LENDER LICENSE RENEWAL REQUIREMENTS FOR 2006

Tennessee Code Annotated (T.C.A.) § 45-15-106(i) provides that the licensing year for title pledge lenders shall end on October 31. Each license may be renewed upon application by the license holder showing continued compliance with the requirements of T.C.A. § 45-15-106 and the payment to the Commissioner annually, on or before October 1 of each year, a license fee in an amount prescribed by the Commissioner by rule, but not to exceed \$800 for each licensed location. Pursuant to Rule 0180-33-.01 of the Rules of the Department, the current fee for the annual renewal of the license of each title pledge office location is \$700.

Among the requirements of T.C.A. § 45-15-106 are the following:

- A tangible net worth, which comprises tangible assets less

BANK DIVISION

APPLICATIONS ACTIVITY

Name & Location	Nature of Change	Date Effective
Reliant Bank Brentwood, TN	New Bank	1-9-06
Heritage Bank and Trust Columbia, TN	New Bank	3-6-06
First Freedom Bank Lebanon, TN	New Bank	4-3-06
Triumph Bank Germantown, TN	New Bank	6-5-06
Commerce Union Bank Springfield, TN	New Bank	8-14-06

CREDIT UNION DIVISION

EPCO CU	Name changed to Heritage South Community CU	2-8-06
John Deere Employees CU	Name changed to Associated Employees CU	2-22-06
Parcel Employees CU	Name changed to UPS Employees CU	3-10-06
Gate Gourmet Employees CU	Merged into Southeast Financial Federal CU	1-24-06
Holliston Mills Employees CU	Merged into Kingsport Press CU	6-5-06
Imani Federal CU	Merged into Postal Employees CU	6-5-06
Jackson City/County Employees CU of Jackson	Merged into Resources Federal CU of Jackson	9-1-06
Electric Service CU	Granted Community Field of Membership	5-26-06

TITLE PLEDGE LENDER

CONTINUED FROM PAGE 3

liabilities, of not less than \$75,000 for each location;

- The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly;
- Each application shall be in writing and under oath to the Commissioner, in a form prescribed by the Commissioner, and shall include the following:

- The legal name, residence and business address of the applicant,

and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee and director of the applicant;

- The location in Tennessee at which the registered officer of the applicant shall be located; and,
- Other data and information the Commissioner may require with respect to the applicant, its directors, trustees, officers, members, managing employees or agents.

The Commissioner has approved and prescribed two separate forms comprising the renewal application. One form is titled

"Application for Renewal of Title Pledge Lender License," and the other form is titled "Financial Report." The Financial Report pertains to information that is exclusive to the applicant's business as a Title Pledge Lender. Both the Application for Renewal of Title Pledge Lender License and the Financial Report must be completed, signed and notarized, then submitted to the Department, along with payment of the license fee, on or before, the October 1 deadline.

Questions concerning the Application for Renewal of Title Pledge Lender License and/or the Financial Report may be directed to Steve Henley, Director, in the Department's Compliance Division at 615-741-3186.

BANK CHARTER REFORM

During the 2006 Legislative Session, the Tennessee Bankers Association (TBA) sponsored certain amendments to the Tennessee Banking Act, Title 45, Chapter 2. Effective May 12, 2006, Public Chapter 660 amended Title 45, Chapter 2, relating to the formation of new banks. The amendments will ultimately assist new banks, in formation, to speed up the application process.

There are three stages to the formation of a Tennessee state-chartered bank. Initially, organizers/incorporators must file a Notice of Intention which informs the Department of the intent to form a new bank. The second stage requires the organizers to file an application with the Department that provides all of the details concerning financial and biographical information of organizers, executive officers and directors as well as the proposed business plan. The Department conducts a field investigation as part of the application stage. If the application receives approval, the final stage is the application for a Certificate of Authority. The three basic steps were not changed by the bill. However, the procedures within the three steps have been amended in an effort to streamline the organization of Tennessee state-chartered banks.

Tennessee Code Annotated (T.C.A.) § 45-2-201 was amended to delete the requirement that all organizers must subscribe to one percent of the proposed minimum capital of the bank, at the time of the filing of the Notice of Intention. This will allow the organizers greater flexibility in promoting diversity among the organizers. In addition, this gives the Commissioner some discretion to determine the minimum contribution that each organizer should make. T. C. A. § 45-2-201 was further amended to state that a bank can be organized as a limited liability company (LLC) as provided in T.C.A. § 45-2-220, which is a new provision added to Chapter 2 and outlined below. T.C.A. § 45-2-202 was amended to add that organizers, in the Notice of Intention, must provide a statement relative to the financing of the organizational expense fund and a copy of the escrow agreement. An additional amendment to T.C.A. § 45-2-202 allows the organizers to request the early issuance of the charter at the Notice of Intention stage.

The filing fee required by the Secretary of State must also be submitted if the applicant requested the filing of the early charter. By permitting the filing of the corporate charter at this stage of the process, organizers' personal assets have some protection against any potential liability that may be incurred during the organizational stage. In addition, having a corporate charter early in the process will facilitate the organizing bank's ability to purchase the property where the bank intends to be located and to enter into other contractual agreements during the organizational stage as may be necessary.

T.C.A. § 45-2-203 was amended to provide that subscription funds paid by organizers may be used to pay the organizational expenses of the bank. In addition, the amendment to this section will permit the organizers to use the organizational funds, upon written consent of the Commissioner, to pay a broker to secure subscriptions. Generally, a broker is not needed for the solicitation of shareholders. However, there may be instances where the use of a broker is warranted.

T.C.A. S§ 45-2-206 was amended to permit organizers to call for payment of subscriptions as soon as the corporate charter is filed with the Secretary of State. Under previous law, organizers could not call for payment of subscriptions until later in the organizational process. This amendment may shorten the time it takes to get a bank open without sacrificing any review and investigation by the Department.

T.C.A. § 45-2-212 was amended to delete the requirement that organizers provide the name, address, business and professional affiliation of each director and executive officer in the application for Certificate of Authority since that information is already required to be submitted to the Department pursuant to T.C.A. § 45-2-204. The amendment also deleted the requirement for the bank to provide the address at which it will be located since the Department would already have that information. The last amendment to this section deletes the requirement to provide certified copies of the organizational minutes and bylaws. The bank "in organization" would have already

submitted its bylaws under T.C.A. § 45-2-204(a)(3). The purpose of this amendment is to eliminate duplication of information.

The new section in Chapter 2, T.C.A. § 45-2-220, provides that banks or trust companies can be organized as an LLC. This amendment gives the Department the ability to promulgate rules specifying the conditions under which a bank or trust company could be organized as an LLC. No bank or trust company could be organized as an LLC until such rules are promulgated. Currently, there is no federal taxation advantage for a bank/trust company to be chartered as an LLC. However, this amendment gives the Department the flexibility to permit a bank or a trust company to organize as an LLC if the IRS should amend its regulations.

T.C.A. § 45-2-1703 was amended to provide the Commissioner with some discretion to permit someone to serve as a director or officer of a bank under Tennessee law that would previously not have been able to serve, if the Commissioner finds that the person has demonstrated fitness to participate in the affairs of the bank through evidence of such person's rehabilitation, including but not limited to, the person's reputation since the person's conviction, the person's age at the time of the conviction, the time which has elapsed since the conviction, and such other factors as the Commissioner determines. This amendment is consistent with federal regulation.

The Department currently has one Notice of Intention on file that qualifies to be processed pursuant to the amendments to Title 45, Chapter 2. All future Notices of Intention received by the Department will be subject to the new procedures. However, Notices of Intention and any application received prior to the May 12, 2006 effective date continue to be processed under the previous statutes.

Questions relative to the amendments or the changes in procedures may be directed to Joyce Simmons, Program Administrator for Applications, at 615-532-2709 or Debra Grissom, Applications Specialist, 615-741-5018.

Chief Credit Officer in Banking and Finance, has worked with the Department for 20 years and Edwards said that relationship was an important one to build on. Friddell has worked for three community banks in East Tennessee with his most recent position being with Citizens Bank of East Tennessee where he served both as a Director and Executive Vice President and Chief Operating Officer.

"One of the primary reasons that we decided to convert to a state charter was due to Jim and his working relationship with the Department. His familiarity with the regulator was a driving force," Edwards said.

Such relationships contribute to good communication between the bank and the regulator, said Greg Gonzales, Acting Commissioner of the Department of Financial Institutions.

"We are pleased that Mountain Commerce Bank is now a state-chartered bank. Our mission is to provide the people of Tennessee with a sound system of state chartered banks. One of the key elements of that mission is to foster a fertile business environment within which banks can operate successfully," Gonzales said. Given the new conversion, as well as the recent name change and acquisition, Mountain Commerce hopes to serve small and medium-sized businesses, Edwards adds.

"Our intent is to be able to raise enough capital in order to be able to compete and go after what is an underserved market -- the small and medium-sized companies," he said.

As of this date, Mountain Commerce Bank operates two offices in Unicoi County. Its current assets are estimated at \$85-\$90 million. However, the bank intends to raise

about \$25 million in assets to further enhance its ability to compete enabling the bank's assets to grow to \$110-\$120 million.

While the bank has not made a formal application yet, Edwards said the bank fully intends to expand its operation and add a third branch in Johnson City in the near future thereby capitalizing on its ability to reach new markets in the mountain south region of East Tennessee and Western Carolina.

This new vision for regional growth is one that will be further enhanced now that Mountain Commerce is a state-chartered bank, Edwards said.

"The Department has been so pro-business, eager and willing to help. I can't see why any bank would want to be anything other than state-chartered," he added. ■

CREDIT UNION DIVISION WELCOMES A NEW EXAMINER

Vickie Young, a 1988 graduate of Lincoln University in Jefferson City, Missouri, was a former Credit Union Examiner with the Department until she left in 2001 to join the staff at the National Credit Union Administration. Young returned to the Department as the new Large Credit Union Examiner on May 1. In this position, she is the Examiner-in-Charge of the examination process for state-chartered credit unions with assets of more than \$100 million.

TDFI tidbit

The change to Rule 0180-7-.08 regarding fee changes in the amounts due for applications for new banks and branch offices took effect last September. As a reminder, the new bank fee increased from \$8,500 to \$20,000; while the branch fee was reduced from \$500 to \$300. A complete fee schedule can be viewed at:

<http://www.tennessee.gov/sos/rules/0180/0180-07.pdf>.

This rule affects state banks, BDCOS, and savings banks and trust companies. If you have any questions associated with the application process, please contact either Joyce Simmons, Program Administrator for Applications, at 615-532-2709 or Debra Grissom, Applications Specialist, at 615-741-5018.

DEPARTMENT RECEIVES INFORMATION REGARDING DRIVER LICENSE QUESTION

In recent weeks, the Department has received questions regarding whether banks and other financial institutions could legitimately copy driver's licenses of customers within a business context or whether such a practice was in violation of the laws regulated by the Tennessee Department of Safety. The Department has worked closely with the Department of Safety to clarify the issue. To the right is a letter from Roger Hutto, General Counsel for the Department of Safety, which addresses this issue.



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DEPARTMENT OF SAFETY
1150 FOSTER AVENUE
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AUG 21 2006
FINANCIAL INSTITUTIONS

August 21, 2006

Commissioner Greg Gonzales
Tennessee Department of Financial Institutions
Bank Division
511 Union Street
Nashville City Center, Suite 400
Nashville, Tennessee 37219

Dear Commissioner Gonzales:

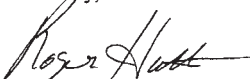
I agree with your assessment in your letter dated August 16, 2006. I have read your explanation of the banking industry's traditional and legitimate business practices. I have also reviewed the comments of the rules promulgated by the Federal Government; such rules being to facilitate the implementation of the U. S. Patriot Act.

As stated earlier, T.C.A. 55-50-601 does prohibit the copying of a driver's license. However, when read in conjunction with the comments of the federal rules and considering the totality of the circumstances, it would appear that banks utilizing the driver license in their traditional legitimate business practices would not, in and of itself, violate such state provision.

It should be noted that if a bank employee copies a driver license for any reason other than a legitimate business purpose that furthers the service of a financial institution's service to the public, such copying would be a violation of 55-50-601 and 602.

If you have any further questions, please just give me a call.

Sincerely,


Roger Hutto
General Counsel

RH/mrj

CURRENCIES

Published by the State of TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS

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